

1. Roll Call:

The regular meeting of the Bend City Council was called to order at 7:00 pm on Wednesday, April 02, 2003. Present upon roll call by City Recorder Patty Stell were Bend Councilors John Hummel, Bruce Abernethy, Chris Telfer, Bill Friedman, Dave Malkin, and Mayor Oran Teater.

2. Pledge of Allegiance.

The pledge of allegiance was recited.

3. Oath of Office for new City Councilor, Linda Johnson.

The oath of office was administered to new City Councilor Linda Johnson by Judge Lisa Bertalan.

4. Consider a Proclamation naming April 6 through 12 as Arbor Week in the City of Bend.

Councilor Hummel moved to declare April 6 through 12 as Arbor Week in the City of Bend. Councilor Malkin seconded the motion, which passed unanimously.

5. Consider a Proclamation naming April National Child Abuse Prevention Month.

Councilor Abernethy read the proclamation naming April National Child Abuse Prevention Month.

Councilor Hummel moved approval of the proclamation. Councilor Johnson seconded the motion, which passed unanimously.

6. Introduce Ken Fuller, Engineering Division Manager.

City Manager David Hales and Assistant Public Works Director Brad Emerson introduced Ken Fuller.

7. Consider a Motion for approval of the minutes:

- a. **Bend City Council Work Session, March 5, 2003**
- b. **Bend City Council, March 5, 2003**

Councilor Hummel moved approval of the minutes. Councilor Telfer seconded the motion, which passed with Councilor Johnson abstaining and all others supporting the motion.

8. Consider a Motion to Receive Petitions

- A. **Receive a petition for the creation of a Local Improvement District (LID) to provide sewer service to five lots located on Sunny Breeze Lane.**

Management Assistant Andy Lindsey explained the LID will affect five lots. 56 percent of property owners signed the petition, which was initiated by property owners.

Councilor Friedman moved acceptance of the petition. Councilor Telfer seconded the motion, which passed unanimously.

9. Consider a Motion to approve the Consent Agenda A:

- A. **Receive Minutes**
 - **Lighting Ordinance Advisory Committee, March 4, 2003**
 - **Lighting Ordinance Advisory Committee, March 20, 2003**
 - **Bend City Council/Bend Planning Commission, February 26, 2003**
- B. **Approve the Westside Pump Station Upgrade – Consultant Design Services proposal from David Evans and Associates Inc. in the amount of \$67,296.00 and authorize the City Manager to process a professional services agreement.**

- C. **Accept the low bid submitted from various contractors for the Romaine Village Pressure Sewer Individual House Connections #3 project (SW0102).**
- D. **Consider a Motion to Adopt a Revised Policy Establishing Guidelines for Street Vendors Operating within Public Right of Way.**
- E. **Approve Liquor License:**
 - **Best Price Cigarettes, 1036 NE 3rd St., Off Premises License.**
 - **Southside Pub, 61160 S Hwy 97 Suite B, Full On Premises License.**
 - **Parkway Chevron, 1095 SE Division, Off-Premises License.**

Councilor Hummel pulled Items D and E from the Consent Agenda.

Councilor Friedman moved approval of the Consent Agenda without Items D and E. Councilor Hummel seconded the motion which passed with Councilor Johnson abstaining and all others supporting the motion.

Councilor Hummel suggested placing the street vendor issue on the next agenda as a public hearing. Councilor Friedman agreed. A lot of time has been spent on this matter and a lot of public input received. It should be placed on the regular agenda.

Councilor Hummel asked for additional information on Item E, specifically a violation noted on one of the applications. Counsel Forbes explained statutes provide for local government review of liquor licenses. The City has the right to object to a license and OLCC can consider the city's input. Police Jordan will provide more information on the violation. Normally, they just review the calls for service.

Councilor Friedman moved approval of the first and second liquor licenses. Councilor Hummel seconded the motion, which passed unanimously. The third license will be placed on the next agenda.

- 10. Consider a roll call vote on Consent Agenda B:**
 - A. An Ordinance amending Bend Code Chapter 7 by adding the requirement that taxi operators provide proof of insurance.**
 - B. Consider a roll call vote on a Resolution amending the City of Bend Fees Resolution as it pertains to Street Vendor Permits.**

Councilor Hummel moved to pull item B from Consent Agenda B and place on the next agenda. Councilor Johnson seconded the motion, which passed unanimously.

Upon unanimous roll call vote Item A on Consent Agenda B was approved.

11. Receive Visitors.

Counsel Forbes discussed visitor comments on agenda items 13 and 14, appeals to hearings officers decisions. Council's practice has been not to hear appeals unless the issue represents a citywide concern. If Council determines not to hear the appeal, the appeal may be heard before the land use board of appeals. If Council does hear the appeal, it would be inappropriate to hear comments on anything other than why the appeal should be heard before Council. Comments should be focused on why the matter presents significant community wide issues.

Tia Lewis signed up to speak only if Council would be hearing testimony on the appeal.

Carrie Ward spoke representing Friends of Bend referring to the work session discussion regarding zone changes from lower density to regular density. Friends of Bend requests that the city consider a refinement plan process for SE Bend. Ms. Ward also registered a concern about the upcoming water summit. The fee to attend and limited amount of space discourage public involvement.

Mike Lovely discussed the Tower Theater and his opposition to the city putting more money in the project. Up to \$8,000 of taxpayer money is going to this project. The city won't be the only one using the audio video equipment at this facility.

Jack Weisgerber spoke about the Arbor Day proclamation. The trees in the Drake Grove are being protected very well by Kirby Nagelhout. Seven states celebrate Arbor Day for a full week. Mr. Weisgerber gave a history of the arbor day celebration.

Mr. Hales recommended that the City support Mr. Weisgerber's nomination for the Drake Grove. A letter of support can be prepared with consent of Council. The majority of Council consented with Councilor Friedman opposed.

Steve Stenkamp spoke in opposition to the Urban Renewal District. With termination of the district, an additional \$168,000 of funding would be available to the Parks and Recreation District, Deschutes County and the Sheriff's Department, and the City. He encouraged Council to terminate the district and put the dollars to better use.

Keith Scott President of Woodriver Village Homeowners Association gave an update on the Southern River Crossing project.

12. Good of the Order

Councilor Hummel had no report.

Councilor Abernethy had no report.

Councilor Telfer congratulated the city, BDB, and Old Mill District on the new signs that are going up all over town.

Councilor Telfer moved to participate in the endeavor with the County regarding the West Nile Virus and authorize a \$5,000 contribution. Councilor Malkin seconded the motion.

Councilor Johnson supports the measure for the sake of prevention. Spot spraying is a good move. Councilor Telfer feels \$5,000 is a minor fee to pay to be aware and concerned for the safety and health of the community. Councilor Malkin advised the City spends \$20 million per year on public safety. This is a small price to pay. Councilor Hummel agrees public health is important, but is opposed to spending \$5,000 on one of the top 30 or 40 health risks, and feels it is a double tax to citizens of the City. Councilor Friedman feels it is a reaction to fear and is concerned about city citizens being taxed twice. He is troubled that the County will exclude the City from this study if it doesn't contribute. Mayor Teater will support the motion, but sees both sides of the issue.

The motion passed 4/3.

Councilor Johnson thanked Council for her appointment.

Councilor Malkin had no report.

Mayor Teater crossed off additional accomplishments from the 100 day agenda.

13. Consider whether to hear an appeal on the subdivision application for (PZ02-484) an 88 lot subdivision on a 19.23 acre property located on the north side of Murphy Road near the intersection of Murphy Road and Country Club Road.

Heidi Kennedy reviewed the highlights of the appeal. Neighbors have raised concerns about lot sizes being incompatible with existing lots and with pedestrian safety. In order for Council to hear an appeal, policy directs that it should be a matter of public or community wide concern or there should be reason it cannot be addressed before the statewide land use board of appeals. Staff recommends not hearing the appeal. Issues can be more efficiently resolved at the land use board of appeals.

The applicant's response to the notice of appeal was submitted into the record.

Councilor Telfer asked why Council has not heard appeals and Counsel Forbes explained hearing appeals is extraordinarily expensive administratively. There is an additional public testimony period. He invited Council to review the hearing officer's decision and consider the

findings of fact. Council would be asked to complete the same process. It is complicated and involved. For as long as the City has had land use authority, it has been policy not to hear land use appeals unless there is a significant citywide impact. There is a professional board that is set up to decide these issues. Councilor Telfer is comfortable not hearing the appeal since there is a board to hear it.

The cost to the applicant for the appeal is \$500 and is a state regulated fee.

Councilor Friedman explained the difference with this decision. Most Council decisions are based on their opinion of what's best for the community. These types of decisions are based on the law, not on opinion. They are judicial decisions. Mr. Forbes confirmed and explained the Council is a legislative body that makes decisions that effect the community as a whole. Land use decisions are quasi judicial requiring understanding of the land use laws. These decisions are better left to the land use board of appeals, unless there is a compelling reason to hear them.

Councilor Hummel pointed out it will be more costly for the appellant to go to LUBA because of the more complex nature of the proceeding. There would be merit to hearing the appeal, if Council could save the applicants money, but the losing party would take it to LUBA anyway.

Councilor Friedman moved to choose not to hear the appeal for PZ02-484. Councilor Hummel seconded the motion, which passed unanimously.

14. Consider whether to hear the appeal of the Hearings Officer decision on File PZ02-407, an 800 square foot addition to an existing 2,380 square foot 2-story building.

Planner Steve Miller explained this property is located at 2nd and Franklin and is the Bend Lock and Safe building. The appellant owns the property. The appellant contends the purpose statement is an applicable criteria and findings should have shown how the criteria was satisfied. City staff contends it is not applicable criteria. Staff recommends not hearing the appeal because the matter is past the 120 day period and not of citywide concern or policy related concern.

Mayor Teater inquired and Mr. Miller responded the application was to add on to the rear of the building.

Councilor Hummel inquired and Mr. Miller responded the 120 day period has expired due to the work load the department is currently experiencing. An appeal was not expected. Overall the design was adequate. This matter was processed as an administrative decision, then was appealed.

Councilor Friedman moved not to hear the appeal on file PZ02-407. Councilor Malkin seconded the motion, which passed unanimously.

15. Consider a roll call vote on a Resolution creating Local Improvement District 675 to provide sanitary sewer service for fourteen lots on Larkwood Drive and Robinwood Place.

Management Assistant Andy Lindsey explained the LID was property owner initiated with 86 percent of affected property owners signing the petition. The preliminary estimate is \$15,508 per property. The majority of property owners agreed to the estimate and wish to proceed. If Council elects to proceed, a public hearing will be scheduled for May 7.

Councilor Abernethy moved approval of LID 675. Councilor Hummel seconded the motion, which passed upon unanimous roll call vote.

**16. An Ordinance amending the City of Bend Zoning Ordinance No. NS-1178, by changing the zone of a parcel of land from RL, Urban Low Density Residential to RS, Urban Standard Density Residential. (61736 Pettigrew Road – Spongberg).
A. Hold a Public Hearing**

Planner Dale VanValkenberg distributed a letter from the opponent to the project. The five acre parcel is located in southeast Bend and the application supports the General Plan. Five written comments have been received and nine people testified at the public hearing in opposition to the

project related to traffic impacts and compatibility. The application is accompanied by a subdivision application. No appeal has been filed on the subdivision approval.

Councilor Abernethy inquired about comments in the letter referring to consideration of the application for development before the application for zone change. Mr. VanValkenberg explained this policy decision was made in 2000 when the procedures ordinance was updated requiring that a zone change be accompanied by development proposal or that consideration be given to worst case scenario regarding impacts to the system. The two types of applications have different requirements. Zone changes are heard before a hearings officer with recommendation go to Council. Subdivision applications can be heard administratively. The subdivision approval is included in the recommendation on the zone change.

Mayor Teater opened the public hearing at 8:10 pm.

Dan Malone is concerned with compatibility with surrounding homes in the area.

Chris Bedsaul spoke on behalf of Level II Development. The subdivision was approved and the hearing officer reviewed the criteria and policies in depth. The subdivision application included somewhat of a refinement plan though it was not required at the time. The master development plan gives staff opportunity to consider surrounding land. The application has met all requirements and the hearings officer recommends approval.

Joan Spongberg is the property owner and is building in the same subdivision.

Mike Connell stated that planning is a local issue. The hearings officer held the public hearing without visiting the property which trivialized the neighbors concerns. He is concerned that the development doesn't turn into what happened on Dean Swift Road. He requested a site plan and review.

Michael Fields spoke representing Level 3 Development. Devaluing of the property is an opinion. Others may feel the development will increase property value. The applicants have followed city ordinances and all requirements have been met. The hearings officer did visit the property. There is specific detail in the findings of the hearings officer.

Mayor Teater closed the public hearing at 8:20 pm.

B. Consider the First Reading

The first reading was held.

17. A. Consider holding a Public Hearing to hear testimony regarding the sale of surplus property at 721 Penn.

Finance Director Jim Krueger explained the property was acquired as part of the Olney/Penn project using transportation SDC funds. The city received two offers on the property. Proceeds of the sale will go into the transportation SDC fund.

Councilor Johnson asked what the city paid for the property. It was purchased as part of a larger package, and works out to have been a little more than the sale price.

Mayor Teater opened the public hearing at 8:21 pm. Upon hearing no comments, the public hearing was closed.

B. Consider a motion to approve sale of property to Kathy Wade for a price of \$130,000.

Councilor Telfer moved to approve the sale of the property to Kathy Wade for \$130,000. Councilor Hummel seconded the motion, which passed with Councilor Malkin opposed and all others supporting the motion.

18. Consider a roll call vote on a proposed Resolution declaring the necessity and intent to appropriate certain described real property, authorizing negotiation for its acquisition, and authorizing institution of condemnation proceedings if necessary.

Counsel Forbes explained this Resolution concerns construction of a roundabout at 8th and Butler Market. Staff has looked at various options for design and placement of the roundabout. Meetings with the neighbors have been held and staff recommends that a roundabout design be approved which takes 4,090 square feet from the Prosser property. Other options cost considerably more to construct. This is the least expensive design. The Resolution is necessary in order to gain authorization to survey the property for appraisal. After the appraisal, the city will negotiate with the Prossers for the sale of the land. If no solution is reached, the city can deposit funds in accordance with the appraisal and continue with construction of the roundabout while solving the property matter in court. Staff anticipates being able to solve the matter with the Prossers. Mr. Forbes noted an amendment needed in Section 3 of the Resolution to add "square feet." The city has had several meetings with the Prossers and will continue to work with them.

Councilor Telfer moved to amend Section 3 of the Resolution adding "square feet." Councilor Johnson seconded the motion, which passed unanimously.

Councilor Hummel moved approval of the Resolution as amended. Councilor Abernethy seconded the motion, which passed upon unanimous roll call vote.

19. Adopt a motion to adopt the Metropolitan Planning Organization to consider work plan priority list.

Planning Manager James Lewis explained the MPO created a policy board including three city councilors, a county commissioner and a representative from ODOT. One of their tasks is to create a work plan. The work plan will ask the MPO to consider transportation needs in the city and county. The policy board recommends the MPO consider the following in their work plan.

1. Master Planning the Hwy 20 corridor within the City, including the Hwy 20 Access Management Plan as initiated by ODOT for the area between NE 10th Street on the west and Purcell Blvd. on the east.
2. Planning for the logical transition between City and County Streets, and State Highways.
3. Plan for the rural/urban interface as related connectivity between all Central Oregon cities.
4. Plan for the transportation improvements necessary to provide adequate access to the north Highway 97 corridor (from Mt. View Mall northward to Deschutes Junction) for the planned Urban Growth Boundary expansion area on the northeast side of Bend.
5. Plan for the relationship between the transportation system improvements and adjoining land uses associated with the ODOT initiated South Parkway Refinement Plan.
6. Ensure that Transit Operations are planned for and coordinated with the City of Bend Transportation System Plan.

Any work the MPO can do on these issues would greatly assist the city.

Councilor Friedman moved to send these as recommendations for priorities for the MPO work plan. Councilor Telfer seconded the motion, which passed unanimously.

20. Consider a roll call vote on a Resolution supplementing Resolution No. 2395 adopted by the City Council of the City on March 5, 2003 to provide for the refunding, redemption or defeasance of additional obligations of the City in an amount not exceeding \$500,000; and related matters.

Finance Director Jim Krueger reminded Council asked if staff had considered all opportunities when the last bond Resolution was considered. It is a volatile interest market currently. Current interest rate on bond financing is 3.1 percent. Staff determined it would be advantageous to refund some issue. The savings would be about \$20,000 for the term of the note.

Councilor Hummel moved approval of the Resolution. Councilor Abernethy seconded the motion, which passed upon unanimous roll call vote.

21. **Transportation System Plan - Policy 21**

Mr. Lewis explained the issue stems from a remand item to clarify what TSP Policy 21 means. It was related to the 27th Street project. Staff proposed alternative language to the policy. Councilor Friedman had suggested only removing the word “major” from the language. A public hearing was held in August of last year. Council was divided on the issue and did not move the project forward. Since that time the design charette process for 27th Street has been underway. Staff is ready to bring the TSP remand issues back to the Planning Commission and Council, or can proceed as Councilor Friedman suggested and remove “major” from the language.

Councilor Abernethy is okay with removing “major.” He asked, how does a minor arterial become a major arterial? Mr. Lewis explained the difference between the two relates to function of volume or capacity that the street is designed to carry.

Councilor Friedman explained the reason for the argument on 27th Street was the language in the TSP. It was not the intent to use language to stop widening on major arterials. The only major arterials in Bend are 27th Street and where it connects to Empire and where it connects to Reed Market, and the piece of Reed Market between 27th Street and the Parkway. The purpose for removing “major” is that it made no sense to restrict to three lanes when it is clear that traffic needs will require five lanes. The language doesn’t require going to 5 lanes, but eliminates a lot of barriers.

Councilor Hummel feels it removes protection. There is nothing that excludes the city from widening if it first implements TDM and TSM measures. He feels the city should try everything before spending a lot of money to widen. Minor arterials will eventually become major. Councilor Hummel is against removing “major.” He feels the city must implement public transit. Councilor Friedman stated it takes Council action to make a minor arterial a major arterial.

Councilor Telfer will support the suggestion though she feels it is a Bandaid approach and Council will have to, at some point, identify what implement means.

Councilor Friedman explained the remand. Another portion of the Transportation System Plan (TSP) describes major arterials. This portion of the TSP puts restrictions on it that the other portion does not. He asked if removing “major” handles the remand issue. Mr. Lewis explained the intent of the remand was to clarify Policy 21. Council can consider removing “major” and take the language through the hearing process. He asked if Council wants to revisit the entirety of the remand.

Councilor Friedman moved to go through the process described by Mr. Lewis and ask that the word “major” be removed from Transportation System Plan item number 21. Councilor Malkin seconded the motion, which passed with Councilor Hummel opposed, Councilor Johnson abstaining and all others supporting the motion.

Councilor Friedman moved to add the words “or model” to the first sentence in Transportation System Plan number 21 after the word “implement” and send it through the same process. Councilor Malkin seconded the motion.

Councilor Telfer asked about the definition of “model.” Mr. Lewis explained there are computer programs that model. Councilor Friedman explained the conflict arose over the interpretation of implementing TDM and TSM measures. Some of the Councilors interpreted implementing as putting the measures in place, then evaluating the impact. Staff advised they could adequately predict impact with modeling. Councilor Telfer noted that adequate is perceived differently. Mr. Lewis noted the results of modeling would indicate if transportation improvements would function within perimeters for a major arterial.

Councilor Hummel feels it is a poor policy and if modeling is acceptable, implementation will never occur. Councilor Abernethy feels that adding the word “modeling” will remove the commitment to actually implementing some of the practices. He is not opposed to having modeling in the language, but doesn’t want to eliminate the need to implement.

Mr. Hales noted that implementation is an ongoing process. Progress has been made, but there are differing expectations about where we should be with implementation of specific TDM and TSM measures.

Councilor Hummel called for the question.

The motion passed 4/2 with Councilors Hummel and Abernethy opposed and Councilor Johnson abstaining.

22. Discuss and process Cooperative Agreement with ODOT for the ODOT Grandview – Nels Anderson Highway 97 project.

Tony Tirico with the Engineering Division explained this agreement with the State to acquire right-of-way to create frontage roads. ODOT will build a median that will affect accesses to the properties. Regulations require that they contact all impacted property owners. These two frontage roads were listed on the transportation system plan. All properties on the east side of Hwy 97 in the subject area will have access to the frontage road. The second frontage road provides circulation for properties on the other side. Right-of-way is being acquired by ODOT. The agreement will transfer ownership of the roads to the city when the project is completed.

The \$45,000 budgetary consideration is for water line construction that would be done anyway and is budgeted for.

Councilor Malkin moved to authorize the City to enter into this cooperative agreement with ODOT for the project as described. Councilor Hummel seconded the motion, which passed unanimously.

23. Discussion of Municipal Judge Pro Tem.

Judge Lisa Bertalan has recommended that another pro temp judge be appointed. Charter authorizes Council or the Judge to appoint a judge pro temp. A name has been suggested, but staff has not gone through an advertisement process. Mr. Hales recommended proceeding with an advertisement process. He also recommended that the pro temp judge be appointed for a two year term.

Councilor Hummel would prefer to open to the appointment to applicants and have the Council make the decision.

Staff will proceed with advertising for the position. The length of term shall be two years.

24. Council Action and Reports.

• **Appoint COCO Alternate**

Councilor Friedman suggested and Mayor Teater appointed Councilor Linda Johnson as the alternate to Central Oregon Cities Organization.

Councilor Malkin had no report.

Councilor Johnson had no report.

Councilor Friedman had no report.

Mayor Teater advised a citizen, Vance Bonner, that the public hearing for the Pettrigrew matter she wished to speak on is closed, but Council would allow written testimony.

Mayor Teater is concerned the Lighting Committee may be overstepping its bounds. Councilor Johnson noted the language in the minutes he referred to was not clear about whether they were

soliciting information or enforcing. Councilor Telfer suggested the Mayor meet with the committee.

Councilor Telfer had no report.

Councilor Abernethy had no report.

Councilor Hummel has been conducting research on the airport issue and had a recent conversation with a representative from the FAA. With most grant funding, any profit at the airport has to go back into the airport. The FAA is offering a pilot project for privatization. Five airports will be selected to participate. The process would allow for use of profits for other purposes. Councilor Hummel will share the information with the City Manager. Mayor Teater doesn't want this to hinder proceeding with Council direction for the airport.

Mr. Hales advised staff needs another couple weeks to bring back the cost for a consultant on planning issues and on contracting services. Hiring of an airport manager is on hold.

25. Receive City Manager's Report.

The Central Oregon Cities Organization (COCO) has been meeting more frequently and held a telephone conference this morning. They discussed 911 bills, but don't anticipate any action. COCO asked legislatures to support Mary Meloy as the representative to the Water Resources Commission.

- **Reed Market and Division long term safety improvements timeline**

Staff will report at the next meeting.

- **Airport Management**
- **Downtown Parking and Access Management Advisory Committee**

Staff is working to get the 100 day list accomplished in the next two meetings.

Mr. Hales advised that Police Chief Andy Jordan will pursue negotiations for consolidation of the public safety records system. However, the city will have significant conditions. Council will be provided a draft of communications with the County Administrator.

Councilor Abernethy inquired about the downtown parking and access management committee. He feels the process is moving forward on the parking structure, but Council has not yet approved it. He is willing to go forward if the city can limit its risk. Mr. Hales will provide a revised proposed Resolution outlining the specific roll of the committee. The strategic plan recommends the committee play a roll in addressing operation and maintenance cost. There were 13 different possible revenue sources. The city's new part time parking manager begins next week. Councilor Friedman agrees with Councilor Abernethy and wants to be clear that Council may support a parking structure under the right set of circumstances. Mr. Hales will be happy to communicate this to the Bend Development Board.

Councilor Friedman met with BDB members regarding the improvements at Wall and Minnesota. He passed around a sketch showing their recommendation for the site.

Councilor Malkin doesn't share Councilor Friedman's opinion on the parking garage. He also advised he will not be concerned if the 100 day agenda is not completed on time.

Mayor Teater noted there are two city employees who are now serving full time in the military, Todd Guthrie and Daren Root. Mayor Teater is concerned about their medical insurance and would like the city to maintain coverage for the families. Staff has been working with the families to determine if there is a gap and will keep Council apprised.

26. Adjourn.

Councilor Hummel moved adjournment. Councilor Telfer seconded the motion, which passed unanimously.

The meeting adjourned at 9:36 pm.

Respectfully Submitted,

Patricia Stell
City Recorder

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